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January 1st, 1852.

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Fremont, November 24, 1849—36

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Office—in the second story of Buckland's Block, FREMONT, OHIO.

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Office—in Sharp's New Brick Block,

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RESPECTFULLY tenders professional services to the citizens of Fremont and vicinity, all operations relating to the preservation and beauty of the natural teeth, or the insertion of artificial teeth, on pivot, gold or silver plate, done in the most manner. He is in possession of the latest improvements now in use, consequently he flatters himself that he is prepared to render entire satisfaction to those who may desire his aid in any branch of the profession.

Residence either administered, audited or extracted without pain, if desired.

Office in Caldwell's Brick Building, over Dr. Rice's office.

Fremont Jan. 24, 1851.

**PORTAGE COUNTY**

**Mutual Fire Insurance Company.**

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**DR. R. S. RICE.**

Continues the practice of Medicine in Fremont and adjacent country.

Office, as formerly, on Frontstreet, opposite Dean's new building.

Fremont, Nov. 23, 1850.—37

**Eclectic Physicians.**

**DOCTORS** Wm. W. Knepper & Wm. H. Knepper.—Office: South East corner of Pike and Front streets, Fremont, Ohio, where one or both of us will be found at all times to attend to Professional calls.

Fremont, July 24th, 1852.—15.

# FREMONT JOURNAL.

No Sacrifice of Principles.

VOLUME I.

FREMONT, SANDUSKY COUNTY, JULY 16, 1853.

NUMBER 25.

## LAW OF OHIO

(BY AUTHORITY.)

AN ACT OF Jurisdiction and Procedure before Justices of the Peace, and of the duties of Constables in Civil Cases.

[CONTINUED.]

### ARTICLE VI.

Witness.

Sec. 65. Any Justice may issue subpoenas to compel the attendance of witnesses to give evidence on any trial pending before himself, or for the purpose of taking depositions, or to perpetuate testimony.

Sec. 66. A subpoena may be served by a constable or any other person, and shall be served by reading the same or stating the contents thereof to the witness, or by leaving a copy thereof at his usual place of residence.

Sec. 67. When not served by a constable or some other person deputed for that purpose by a Justice, no fees shall be charged in the suit for serving it.

Sec. 68. If any witness having been subpoenaed, attend and be not examined by either party, the costs of such witness shall be paid by the party ordering the subpoena, unless the adverse party, by confessing the matter or otherwise, render unnecessary the examination of such witness.

Sec. 69. Whenever it shall appear to the satisfaction of a Justice, by proof made before him, that any person has been duly served with a subpoena to appear and give testimony before him in any matter in which he has authority to require such witness to appear and testify, that his testimony is material and that he refuses or neglects to attend as such witness in conformity with such subpoena, the Justice shall issue a warrant to arrest the delinquent for the purpose of compelling his attendance and punishing his disobedience.

Sec. 70. When the person arrested is brought before the Justice or when a person in attendance refuses to testify as a witness, and no valid excuse be shown, the Justice may impose a fine on him not exceeding five dollars. An entry of such fine stating the reason therefor, must be made by the Justice in his docket, and thereupon shall have the effect of a judgment in favor of the State of Ohio against the delinquent, and may be enforced against his person or property.

Sec. 71. Every person subpoenaed as aforesaid, and neglecting to appear or refusing to testify, shall also be liable to the party in whose behalf he shall have been subpoenaed, for all damages which such party shall sustain by reason of such delinquency.

Sec. 72. Depositions may be taken to be read in any cause pending before a Justice of the Peace, in like manner and subject to the same restrictions and rules of law as in cases pending in the Court of Common Pleas.

### ARTICLE VII.

The trial and its incidents.

Sec. 73. At the time appointed for trial, if no jury shall have been demanded by either party, the Justice shall proceed to try the action, shall hear the proofs and determine the cause according to law and the right.

Sec. 74. Where parties agree to enter without process before a Justice, any action of which such Justice has cognizance, such Justice shall enter the same on his docket and proceed to trial, judgment and execution in all respects in the same manner as if summons had been issued, served and returned.

Sec. 75. In all civil actions after an appearance of the defendant, and before the court shall proceed to inquire into the merits of the cause, either party may demand a jury to try the action which jury shall be composed of six good and lawful men, having the qualifications of electors, unless the parties shall agree on a less number.

Sec. 76. When a jury is demanded the trial of the cause must be adjourned until the time fixed for the return of the jury. If neither party desire an adjournment, the time must be determined by the Justice, and must be on the same day, or within the next two days; the jury must be immediately selected as herein provided.

Sec. 77. The Justice shall write in a panel, the names of eighteen persons, citizens of the township, or if the action be one in which the jurisdiction is not limited to the township, then citizens of the county, from which the defendant, his agent or attorney, shall strike one name, the plaintiff, his agent or attorney, one, and so alternately until each shall have stricken six names, and the remaining six shall constitute the jury to try such case, and if either party neglect, or refuse to aid in striking the jury as aforesaid, the Justice shall strike the same in behalf of such party.

Sec. 78. The Justice thereupon shall issue a summons for the jury, in which the following form shall be observed in substance as near as practicable.

The State of Ohio, county of \_\_\_\_\_

To \_\_\_\_\_ Constable of \_\_\_\_\_ township;

You are hereby commanded to summon \_\_\_\_\_ to appear before me a \_\_\_\_\_ in said township, on the \_\_\_\_\_ day of \_\_\_\_\_ A. D. \_\_\_\_\_, at \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon, to serve as juror in a case pending before me, then and there to be tried. And this they shall in no wise omit.

And have you then there this writ with your doings thereon.

Give under my hand, this \_\_\_\_\_ day of \_\_\_\_\_ A. D. \_\_\_\_\_

Justice of the Peace.

Sec. 79. The constable shall serve such summons by a personal service, thereof, and return the same endorsed with the names of the persons summoned, at the time appointed for the trial of the cause.

Sec. 80. Jurors for neglecting or refusing to attend when properly summoned, or refusing to serve when in attendance, shall be liable to the like penalty, and be proceeded against in same manner, as witnesses who fail to attend or refuse to testify.

Sec. 81. The constable shall be in attendance on the court at and during the progress of the trial, and if from challenge or other cause the panel shall not be full, he may fill the same in the same manner as is done by the sheriff in the Court of Common Pleas.

the sheriff in the Court of Common Pleas.

Sec. 82. When a jury shall be in attendance and the cause shall be continued, the jurors must attend at the time and place appointed for trial without further notice.

Sec. 83. If either party object to the competency of a juror, the question must be tried in a summary manner by the Justice, who may examine the juror or other witness under oath.

Sec. 84. The Justice shall administer an oath or affirmation to the jury well and truly to try the matter in difference between the parties and a true verdict give according to the evidence.

Sec. 85. After the jury shall have been sworn they shall sit together and hear proofs and allegations of the parties, and after hearing the same shall be kept together in some convenient place under the charge of a constable until they have agreed upon their verdict, or shall be discharged by the Justice.

Sec. 86. When the jurors shall have agreed upon their verdict they shall deliver it to the Justice publicly, who shall enter it upon the docket.

Sec. 87. Whenever the Justice shall be satisfied that a jury sworn in any cause before him cannot agree in their verdict after having consulted upon it a reasonable time, he may discharge them and continue the cause, and may if required by either party, proceed to strike another jury as hereinbefore provided; the cause shall be continued to such time as the Justice thinks reasonable, unless the parties or their attorneys agree on a longer or shorter time, or unless they may agree that the Justice may render judgment or the evidence already heard before him.

Sec. 88. It shall be lawful for the Justice before whom a cause has been tried, on motion, and being satisfied that the verdict was obtained by fraud, partially, or undue means, at any time within four days after entering of judgment, to grant a new trial and he shall set a time for the new trial, of which the opposite party shall have at least three days notice.

Sec. 89. The opposite party shall also have a reasonable notice of such motion for a new trial, if the same is not made on the day of the former trial, and in the presence of such party, such notices to be given by the applying party. If the new trial shall be granted, or the jury be unable to agree, the proceedings shall be in all respects as upon the return of the summons.

Sec. 90. If either the plaintiff or defendant, in their bill of particulars, claim more than twenty dollars, the case may be appealed to the Court of Common Pleas; but if neither party demand a greater sum than twenty dollars, and the cases tried by jury there shall be no appeal.

Sec. 91. If on appeal by the plaintiff, he shall not recover a larger sum than twenty dollars, exclusive of interest since the rendition of the judgment before the Justice, he shall be adjudged to pay all costs in the Court of Common Pleas, (including a fee of five dollars to defendant's attorney,) and in case the defendant shall demand a set-off greater than twenty dollars and he appeal and do not recover twenty dollars, he shall in like manner pay all costs in the appellate court including a like fee to plaintiff's attorney.

Sec. 92. Upon the verdict being delivered to the Justice, and before judgment being rendered thereon, each juror shall be entitled to receive fifty cents at the hands of the successful party, which shall be taxed in the costs against his adversary. When the jury shall be unable to agree upon a verdict, the same compensation shall be paid them by the party calling the jury, and the same shall be taxed in the cost bill against the losing party.

Sec. 93. In all cases which shall be tried by a jury before a Justice of the Peace, either party shall have a right to except the opinion of the Justice upon any question of law which may arise during the trial of the cause, and when either party shall allege such exception, it shall be the duty of the Justice to sign and seal a bill, containing such exception, if truly alleged with the point decided, so that the same may be made part of the record in the cause.

### Arbitrations.

Sec. 94. At any time before trial and judgment rendered, the plaintiff and defendant consenting thereto, may have the cause submitted to the arbitration of three disinterested men who shall be chosen by the parties and if the arbitrators be present, they shall hear and determine the cause or on oath or affirmation to be administered by the Justice. But if the parties chosen as arbitrators be not present the Justice shall issue a summons for them to attend at the time and place appointed for the trial, which shall be served by any constable, or the parties as they may agree. The fees of arbitrators shall be the same as that paid to jurors.

Sec. 95. When the arbitrators shall convene and be qualified, they shall proceed to hear and determine the cause, and make out their award in writing; which shall be valid when signed by any two of them, and return the same to the Justice; who shall thereupon enter such award on his docket, and thereon render judgment and issue execution, as in other cases.

Sec. 96. Every judgment rendered on such award, shall conclude the right of the parties thereto; unless it shall be made to appear to the Justice of the Peace who rendered such judgment and within ten days from the rendition of the same, or to the Court of Common Pleas, on appeal, that such award was obtained by fraud, corruption, or other undue means.

Sec. 97. Whenever satisfactory proof shall be adduced before such Justice within the period aforesaid, that such award was obtained by fraud, corruption, or other undue means it shall be competent for such Justice to set aside such award and his judgment thereon rendered, and thereupon proceed to such final trial and judgment, as if such award had never been made.

Sec. 98. No appeal shall be allowed to the Court of Common Pleas from a judgment of a Justice of the Peace rendered on an award, unless the party praying such appeal, shall file with such Justice an affidavit, therein stating that he or she does verily believe that such award was obtained by fraud, corruption, or other undue means.

Sec. 99. And if on appeal from the judgment of a Justice rendered on any such award, the Court of Common Pleas shall be satisfied that the award was obtained by fraud, corruption, or undue means, such court shall set aside the award, and proceed to hear and determine the cause on the merits, as in other cases of appeal.

Sec. 100. But if the said court shall be of opinion that the award was not obtained by fraud, corruption or other undue means they shall render judgment thereon and for the costs of suit and award execution as in other cases.

*Trial of the right of property levied on or attached.*

Sec. 101. When a constable shall levy on or attach property, claimed by any person or persons, other than the party against whom the execution or attachment issued the claimant or claimants shall give three days notice, in writing, to the plaintiff or his agent, or if not found within the county, then such notice shall be served by leaving a copy thereof at his usual place of abode in such county, of the time and place of the trial of the right to such property, which trial shall be held before some Justice of the township at least one day prior to the time appointed for the sale of such property.

Sec. 102. If on the trial the Justice shall be satisfied from the proof that the property, or any part thereof, belongs to the claimant or claimants, such Justice shall render judgment against the party in whose favor such execution or attachment issued for the costs, and issue execution therefor, and shall moreover, give a written order to the constable who levied on, or who may be charged with the duty of selling such property, directing him to restore the same, or so much thereof as may have been found to belong to such claimant or claimants.

Sec. 103. But if the claimant or claimants fail to his or their right to such property, or to any part thereof, the Justice shall render judgment against such claimant or claimants for the costs that have accrued on account of such trial, and issue execution therefor & the constable shall not be liable to the claimant or claimants for their property so taken.

### ARTICLE VIII.

Judgments.

Sec. 104. Judgments that the action be dismissed without prejudice to a new action may be entered with costs, in the following cases:

1—When the plaintiff voluntarily dismisses the action before it is finally submitted.

2—When he fails to appear at the time specified in the summons, or upon adjournment, or within one hour thereafter.

3—When it is objected at the trial and appears by the evidence that the action is brought in the wrong township.

Sec. 105. If the plaintiff fail to appear at the return day of the summons and his bill of particulars be not filed and evidence before the Justice, the action must be dismissed.

If the defendant fail to appear at the return day of the summons, or if either party fail to attend at the time to which a trial has been adjourned, or fail to make the necessary bill of particulars, or fail in the proof on his part, the cause may proceed at the request of the adverse party, and judgment must be given in conformity with the bills of particulars and proofs.

Sec. 106. When judgment shall have been rendered against a defendant in his absence, the same may be set aside, upon the following conditions:

1—That his motion be made within ten days after such judgment was entered.

2—That he pay or confess judgment for the costs awarded against him.

3—That he notify in writing the opposite party, his agent or attorney, or cause it to be done, of the opening of such judgment and of the time and place of trial at least five days before the time if the party reside in the county, and if he be not a resident of the county by leaving a written notice thereof at the office of the Justice ten days before the trial.

Sec. 107. Upon a verdict the Justice must immediately render judgment accordingly. When the trial is by the Justice judgment must be entered immediately after the close of the trial, if the defendant has been arrested or his property attached; in other cases it must be entered either at the close of the trial, or if the Justice then desire further time to consider, on or by the fourth day thereafter, both days inclusive.

Sec. 108. When the amount due to either party exceeds the sum for which the Justice is authorized to enter judgment, such party may remit the excess and judgment may be entered for the residue. A defendant need not remit such excess, and may withhold setting the same off, and a recovery for the amount set off and allowed, or any part thereof, shall not be a bar to his subsequent action for the amount with held.

Sec. 109. If the defendant any time before trial enter in writing to allow judgment to be taken against him for a specified sum, the plaintiff may immediately have judgment therefor with the costs then accrued. But if he did not accept such offer before the trial and fail to recover in the action a sum equal to the offer, he cannot recover costs accrued after the offer; but costs must be adjudged against him. But the offer and failure to accept it cannot be given in evidence to affect the recovery otherwise than as to costs as aforesaid provided.

Sec. 110. Where judgment is rendered in a case where the defendant is subject to arrest and imprisonment, it must be so stated in the judgment, and entered in his docket.

### ARTICLE IX.

Appeals.

Sec. 111. In all cases not otherwise specially provided for by law, either party may appeal from the final judgment of any Justice of the Peace to the Court of Common Pleas of the county, where the judgment was rendered.

Sec. 112. The party appealing shall, within ten days from the rendition of the judgment, enter into an undertaking to the adverse party with at least one good and sufficient surety to be approved of by such Justice, in a sum not less than fifty dollars in any case, nor less than double the amount of the judgment and costs, conditioned:

1—That the appellant will prosecute his appeal to effect, and without unnecessary delay.

2—That if judgment be adjudged against him on the appeal, he will satisfy such judgment and costs.

Such undertaking need not be signed by the appellant.

Sec. 113. And the said Justice shall make out a certified transcript of his proceedings, including the undertaking taken for such appeal and shall, on demand, deliver the same to the appellant, or his agent, who shall deliver the same to the clerk of the court to which such appeal may be taken, on or before the second day of term thereof, next following such appeal; and such Justice shall also deliver or transmit the bill or bills of particulars, the depositions, and all other original papers, if any, used on the trial before him, to such clerk, or before the said second day of such terms; and all further proceedings before the Justice of the peace in that case shall cease and be stayed, from the time of entering into such undertaking.

Sec. 114. The clerk, on receiving such transcript, and other papers as aforesaid, shall file the same, and docket the appeal.

Sec. 115. The plaintiff in the court below shall be plaintiff in the court of common pleas, and the parties shall proceed in all respects, in the same manner as though the action had been originally instituted in the said court.

Sec. 116. If the appellant shall fail to deliver the transcript, and other papers, if any, to the clerk, and have his appeal docketed as aforesaid, on or before the second day of the term of the said court next after such appeal, the appellee may at the said term of said court file a transcript of the proceedings and judgment of such Justice, and the said cause, shall, on motion of the appellee, be docketed, and the court is authorized and required on his application, either to enter up a judgment in his favor, similar to that entered by the Justice of the peace, and for all the costs that have accrued in the court and award execution thereon; or such court may with the consent of such appellee; dismiss the appeal, at the costs of the appellant, and remand the cause to the Justice of the peace, to be thereupon proceeded in as if no appeal had been taken.

Sec. 117. If the plaintiff, in the action before the Justice, shall appeal from any judgment rendered against such plaintiff, and after having filed his transcript and caused such appeal to be docketed, according to the provisions of this act shall fail to file a petition or otherwise neglect to prosecute the same to final judgment, so that such plaintiff shall become nonsuit, it shall be the duty of the court to render judgment against such appellant, for the amount of the judgment rendered against him by the Justice of the peace, together with the interest accrued thereon, and for costs of suit, and to award execution therefor as in other cases.

Sec. 118. If both parties fail to enter such appeal within the time limited as aforesaid, the Justice, on receiving a certificate from the clerk of the court, stating that the appeal was not entered, or being entered, was dismissed as aforesaid, shall thereupon issue execution upon the judgment, in the same manner as if such appeal had never been taken.

Sec. 119. If any person appealing from a judgment rendered in his favor; shall not recover a greater sum than the amount for which judgment was rendered, besides costs and the interest accruing thereon, every such appellant shall pay the costs of such appeal.

Sec. 120. When any appeal shall be dismissed, or when judgment shall be entered in the court of common pleas against the appellant, the surety in the undertaking shall be liable to the appellee for the whole amount of the debt, costs and damages, recovered against the appellant.

Sec. 121. When an appeal taken to the court of common pleas shall there be quashed by reason of irregularity in taking or consuming the same, the cause for quashing shall be stated in the order of the court, and a transcript of such order shall be lodged with such Justice, who shall thereupon proceed to issue execution, in the same manner as if no appeal had been taken.

Sec. 122. In proceedings on appeal, when the surety in the undertaking shall be insufficient, or such undertaking may be insufficient, in form or amount; it shall be lawful for the court on motion, to order a change or renewal of such undertaking, and direct that the same be certified to the Justice from whose judgment the appeal was taken, or that it be recorded in said court.

Sec. 123. Appeals in the following cases shall not be allowed:

1—On judgments rendered on confession:

2—In jury trials where neither party claim in their bill of particulars a sum exceeding twenty dollars:

3—In the action for the forcible entry and detention or forcible